UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

POWER EQUIPMENT MAINTENANCE, INC.,	)	CIVIL ACTION FILE NO.
	)	____________________
Plaintiff,	)	
	)	
v.	)	
	)	
AIRCO POWER SERVICES, INC., AIRCO INDUSTRIAL SERVICES, INC. RONNIE ONOFRY and TROY BURROWS,	)	
	)	
Defendants.	)	

COMPLAINT AND DEMAND FOR JURY TRIAL

COMES NOW Plaintiff Power Equipment Maintenance, Inc. ("PEM") and brings this Complaint against Defendants Airco Power Services, Inc. ("Airco Power"), Airco Industrial Services, Inc. ("Airco Industrial" and, collectively with Airco Power, "Airco"), Ronnie Onofry, and Troy Burrows for injunctive relief and damages, showing the Court as follows:

PRELIMINARY STATEMENT

1. Onofry and Burrows were former high-ranking employees of PEM who, in coordination with other former high-ranking PEM employees, have since

joined a competitive family of companies owned by Azalea Capital, a private equity firm. While they were employed by PEM, Onofry and Burrows conspired and planned their resignations and future employment with competitors, misappropriated confidential information, solicited PEM customers, and otherwise coordinated their departure with a group of no fewer than three other former PEM employees so that they could all hit the ground running with an unfair competitive advantage over PEM.

PARTIES, JURISDICTION, AND VENUE

2. Plaintiff PEM is a South Carolina corporation, with its principle place of business in Piedmont, South Carolina. PEM is a leading provider of specialty maintenance support services to the power generation industry. PEM provides expertise and a diverse range of services relating to turbine/generator maintenance, including rotating equipment maintenance, modification, inspection, installation, turbine consulting, equipment repair and overhaul, outage planning, project management, and recruiting and providing technical & craft labor support.

3. Defendant Airco Power is a wholly-owned subsidiary of Power Services Group, Inc. ("Power Services") doing business at 4919 Old Louisville Road, Garden City, Georgia 31408. Airco Power is a competitor to PEM and provides services substantially similar to PEM, including the provision of

specialized labor and craft supervision required to install and maintain gas and steam turbines and other rotating equipment, performing inspections, and performing minor repairs and/or managing major outages.

4. Defendant Airco Industrial is a wholly-owned subsidiary of Power Services doing business at 4919 Old Louisville Road, Garden City, Georgia 32408. Airco Industrial provides services substantially similar to PEM, including the provision of specialized labor and craft supervision required to install and maintain gas and steam turbines and other rotating equipment, performing inspections, and performing minor repairs and/or managing major outages.

5. Airco Power and Airco Industrial are the same kind of business performing the same kinds of services. The only difference is that Airco Power purports to perform its services for the power generation industry while Airco Industrial purports to perform its services for other heavy industries (such as pulp and paper mills or refineries).

6. Power Services, Airco Power, and Airco Industrial are alter egos of each other. Upon information and belief, Airco Power and Airco Industrial share common ownership, common control, common management, substantially the same employees, substantially the same equipment, substantially the same assets, substantially the same business purpose, and provide substantially the same

products or services in regards to substantially the same kinds of industrial equipment. Upon information and belief, Airco Power and Airco Industrial do not deal with each other at arm's length, like bona fide independent businesses. Upon information and belief, there is an arrangement between Airco Power and Airco Industrial to share and/or interchange employees, equipment, and business opportunities.

7. Defendant Burrows is the President of Airco Power, and, upon information and belief resides in Chatham County, Georgia where he may be served with process.

8. Defendant Onofry is the President of Airco Industrial, and, upon information and belief resides in Greenville County, South Carolina, where he may be served with process.

9. This Court has proper jurisdiction of the subject matter of this action under 28 U.S.C. § 1331 in that this action arises under the laws of the United States, and specifically 18 U.S.C. § 1030. This Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367.

10. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and (c) because a substantial part of the events or omissions giving rise to the claims

asserted herein occurred in this district and because Airco and Burrows may be found in this district.

FACTS

11. Onofry served as PEM's Executive Vice President of Turbine Services for approximately two years. In that role, Onofry was responsible for steam (fossil and gas fired generation plants) and nuclear turbine services, including inspection, repair, and realignment of steam turbines and generators. Shortly before resigning, Onofry also was given responsibility for PEM's wind and hydro turbine services.

12. Burrows most recently served as PEM's Vice President, Maintenance Services for approximately two years. In that role, Burrows was responsible for running civil maintenance (including scaffold sales and projects) along with nuclear reactor services.

13. Burrows and Onofry were key members of PEM's management team and had knowledge of and access to PEM's confidential information and trade secrets, including but not limited to PEM's financial information, pricing information, bidding strategies, profit margins, customer contacts and preferences, processes, methods, and corporate and marketing strategies.

14. Burrows and Onofry also worked closely with other former key members of PEM's management team, including founder and President Keith Ravan, Vice President of Finance Lindy Hill, and Senior Project Manager Santiago Perez. As a group, these individuals were intimately familiar with every aspect of PEM's business and had knowledge of and access to all of PEM's confidential information and trade secrets.

PEM Considers Acquiring Airco Industrial Services, Inc.

15. In the summer of 2011, PEM and its parent companies considered acquiring the business then known as Airco Industrial Services, Inc. ("Airco I"). Airco I was a competitor of PEM and therefore represented an opportunity for PEM to grow its business while simultaneously realizing synergistic cost savings.

16. Ravan and Onofry were heavily involved in conducting due diligence on Airco I and negotiating the potential acquisition. As a result of this involvement, Ravan and Onofry learned information about PEM and its analysis of Airco I as a potential acquisition target.

17. Ultimately, the potential acquisition of Airco I by PEM and/or its affiliates fell through in the fall of 2011.

Ravan Leaves PEM to Join With Azalea Capital at Orbital Tool

18. In the spring or summer of 2012, Ravan decided to leave PEM and began looking for opportunities with a Greenville, South Carolina-based private equity firm, Azalea Capital. At the time, Ravan had not yet resigned or announced his intentions to PEM.

19. Before resigning from PEM, Ravan assisted Azalea Capital with analyzing potential acquisition targets, including Continental Field Machining. Each of these companies was also a potential acquisition target for PEM and/or its affiliates.

20. In or around June 2012, Ravan decided to leave PEM and join Orbital Tool Technologies Corp. ("Orbital Tool"). Ravan co-invested in Orbital Tool with Azalea Capital and an individual named Dennis McLaughlin. Ravan was appointed President/CEO of Orbital Tool following the acquisition.

21. Ravan announced his resignation from PEM effective July 1, 2012.

22. About one month after Ravan resigned from PEM, Lindy Hill, PEM's Vice President of Finance, resigned. Upon information and belief, Hill is employed by Azalea Capital and/or an Azalea Capital portfolio company and is now working with Ravan.

Azalea Capital Buys Airco I

23. After Ravan had joined forces with Azalea Capital, Azalea Capital became interested in Airco I – the entity that Ravan had reviewed as a potential acquisition target while employed by PEM.

24. Azalea Capital purchased Airco I in the late summer or fall of 2012.

25. Airco I was then split into two ostensibly "separate" entities based on whether the particular customer to be served was in the power generation industry (Airco Power) or another industry (Airco Industrial). Both companies were then reunited under the Power Services holding company. Not coincidentally, PEM is part of the "Power Services" division of its parent company, BHI Energy.

Burrows and Onofry Decide to Resign from PEM and Join Airco

26. Sometime after Azalea Capital became interested in Airco I as a potential acquisition target, Burrows and Onofry decided to resign from PEM and join Airco.

27. Upon information and belief, Burrows and Onofry were solicited, encouraged, and recruited by Ravan and/or Azalea Capital to join Airco.

28. However, Burrows and Onofry did not promptly announce their intention to resign and join a competitor. It was not until November 21, 2012 that

Burrows and Onofry, in substantially similar resignation letters, announced their intention to resign.

29. In the time between deciding to resign and actually leaving their employment, Burrows and Onofry began laying the groundwork for their new employment while still employed by PEM.

Burrows and Onofry Begin Feathering Their Nest With PEM's Confidential Information

30. For example, while still employed by PEM, Onofry solicited a candidate for employment with PEM to consider working for Airco instead.

31. As another example, on October 30, 2012, Onofry emailed Burrows a copy of PEM's Steam Turbine/Gas Turbine Service 5 Year Strategy, a highly confidential and trade secret document that laid out PEM's detailed strategy for competition in the marketplace over the next 5 years.

32. There was no legitimate business purpose for Burrows to access or review this document (which was dated July 3, 2012) on October 30, 2012. Instead, upon information and belief, Onofry accessed and sent the 5 Year Strategy to Burrows to help Burrows set up their anticipated employment with Airco.

33. A competitor with access to the 5 Year Strategy would have an unfair economic advantage because it would be able to anticipate and counter PEM's strategies for competition in the marketplace.

34. As another example, on November 14, 2012, Burrows sent an email from his PEM email account to his personal email account with the subject line "**FW: This is highly confidential!!** Alstom PB2 outage duration." (emphasis added). This email was from the VP of Sales of PEM's parent company, BHI. The body of the email stated that it was "**Private & Personal – Please do not distribute.**"

35. The email that Burrows forwarded to himself on November 14, 2012 was dated October 24, 2012. It contained a list of individuals, both employed by the customer and employed by PEM, that a key PEM customer considered to have contributed to the customer's success. There was no legitimate business reason for Burrows to forward this "highly confidential" information to his personal email address.

36. The "highly confidential" email that Burrows forwarded to himself would provide a competitor with an unfair economic advantage because the competitor would know and have contact information for the key individuals at PEM's customer, as well as the PEM employees that the customer considered to have been important to its success. This employee information is extremely valuable since identifying and providing reliable, talented employees is a critical driver of success in the PEM's line of business.

37. Burrows and Onofry finally announced their intention to resign on November 21, 2012. Despite having already taken key information, Burrows misleadingly told PEM in his resignation letters that "I have and will not take any confidential and proprietary information of PEM with me as part of my separation and assure you that I will comply with my legal obligations." Onofry used nearly identical language in his resignation letter, which was submitted the very same day: "I have not and will not take any confidential and proprietary information of PEM with me as part of my termination and assure you that I will comply with the legal obligations of my non-compete agreement." A third individual who resigned the day before, Leon Motts, PEM's Vice President of Hydro Services, also submitted a suspiciously similar resignation letter.

38. Upon information and belief, Burrows and Onofry coordinated the content of their resignation letters with each other and/or were provided with some or all of the content of their resignation letters by Airco or its employees or representatives.

39. After Burrows and Onofry announced their intent to resign, their access to PEM's computers and information was strictly limited.

40. Nevertheless, Burrows continued to steal PEM's confidential information in preparation for competition once he formally joined Airco.

41. The day after announcing his resignation (i.e., November 22, 2012), Burrows emailed, from his PEM e-mail account, a key PEM customer to announce that he had "accepted a new position just the day before yesterday" and will be making his "move to Airco week after next."

42. In this November 22, 2012 e-mail, Burrows solicited business from the customer on behalf of Airco, stating "I hear you have a very challenging new assignment coming up. I would love to hear more about it when you get time. Let's keep in touch for sure going forward. I look forward to seeing you again in the not to [*sic*] distant future. . . . PS I have copied my personal email above. I will drop you another note when I get on the other side."

43. On November 26, 2012, Burrows directed a PEM administrative assistant to print a draft contract between PEM and one of its largest customers. Burrows no longer had the ability to access and print such documents and in directing that the contract be printed for him, surreptitiously violated Plaintiff's computer access policy.

44. The draft contract, which was then the subject of ongoing negotiations, contained detailed and confidential information related to PEM's staffing, compensation policies, and profit margins. The contract itself contained a confidentiality clause, requiring that all the terms of the contract be kept

confidential. A competitor could also use the draft contract to compete for other scopes of work against PEM.

45. A competitor could gain an unfair competitive advantage by using the draft contract to predict PEM's staffing proposal and underbid for the staffing work covered by the contract.

46. Upon information and belief, Burrows had the contract printed out for him so that he could take it with him to Airco and use it to compete against PEM.

47. On November 27, 2012 (just three days before the effective date of his resignation), Burrows emailed to his personal email address Ravan's July 6, 2012 announcement of his resignation. By forwarding of this email, Burrows gave himself both Ravan's contact information, as well as the email addresses of all or nearly all other PEM employees.

48. Upon information and belief, Burrows and Onofry took the above-described PEM documents for the purpose of disclosing and/or using them on behalf of Airco. Upon further information and belief, Airco and Onofry had actual or constructive knowledge of Burrows' activities on Airco's behalf and encouraged, condoned, and/or ratified them.

Burrows Accesses PEM Database After Joining Airco

49. Upon information and belief, the very first working day after leaving PEM and joining Airco, Burrows (December 3, 2012), without authorization, logged in to a database of turbine industry information and upcoming business opportunities using PEM's login credentials.

50. PEM pays to subscribe to this database and relies upon it in identifying and targeting potential opportunities.

51. Burrows's use of PEM's login credentials to access the database gave Burrows and Airco an unfair competitive advantage because, at a minimum, they obtained free access to the database information.

52. Upon information and belief, Burrows, in taking PEM's confidential information and trade secrets, and unlawfully and without authorization using PEM's login credentials to access PEM's database account, acted with the full knowledge, consent, authority, ratification, and encouragement of Onofry and/or Airco.

Burrows and Airco Use PEM Information to Dissuade Customers From Continuing Contracts with PEM and/or Entering Into New Contracts

53. Upon information and belief, Burrows and Airco have continued to solicit one or more PEM customers that Burrows had previously worked with at

PEM, including the customer that Burrows had expressly solicited by email the day after announcing his resignation.

54. As a direct and proximate result of Burrows's and Airco's solicitation, at least one customer has declined to give work to PEM that it had traditionally performed and/or has changed its business position with respect to PEM's continued performance of services.

55. This customer alone represents millions of dollars in lost revenues for PEM.

PEM Takes Reasonable Measures to Protect the Confidentiality of Its Information

56. PEM takes reasonable measures to protect the confidentiality of its confidential information and trade secrets, including but not limited to the information described in general terms above.

57. For example, PEM's Handbook requires its employees to maintain the secrecy of its proprietary, trade secret, and confidential information.

58. Certain high-level PEM employees with access to particularly sensitive information are also required to sign nondisclosure covenants. For example, Ravan, Onofry and Hill are all bound by contractual nondisclosure covenants.

59. As another example, many of PEM's most confidential documents are marked "confidential" or words to that effect.

60. As another example, PEM's email system automatically appends a CONFIDENTIALITY NOTICE to all outgoing PEM emails, which provides that the email "with its contents may contain confidential and/or legally privileged information. It is solely for the use of the intended recipient(s). Unauthorized interception, review, use or disclosure is prohibited and may violate applicable laws including the Electronic Communications Privacy Act."

61. Beyond policies, PEM employs other security measures such as the use of passwords, security time-outs on computers, on-the-job training, segregation of confidential information, and places locks on offices, doors, and file cabinets.

COUNT I

VIOLATION OF THE COMPUTER FRAUD AND ABUSE ACT

(All Defendants)

62. PEM repeats and realleges paragraphs 1 through 61 above as if fully stated herein.

63. On information and belief, Defendants Burrows and Onofry knowingly and/or with intent to defraud PEM, accessed PEM's computer systems without authorization and/or in excess of their authorization to obtain information from a computer used in interstate commerce.

64. By reason of the above-alleged acts and conduct, Burrows and Onofry furthered the intended wrongdoing by improperly accessing, obtaining, and utilizing valuable information from protected computers for unauthorized purposes in violation of the fiduciary duties he owed to PEM and/or after the termination of his employment.

65. On information and belief, the information Burrows and Onofry obtained from the above-alleged acts and conduct included valuable information relating to PEM's business operations, including, but not limited to, confidential information regarding PEM's pricing, staffing, business opportunities, and contracts. This critical information is extremely valuable to PEM and its competitors.

66. On information and belief, Airco encouraged and/or benefited from Burrows's and Onofry's unauthorized access and use of protected computer systems.

67. As a direct and proximate result of the wrongful conduct alleged hereinabove, PEM has incurred costs exceeding $5,000 and damages in an amount to be proved at trial.

COUNT II

TORTIOUS INTERFERENCE WITH BUSINESS RELATIONSHIPS
(All Defendants)

68. PEM repeats and realleges paragraphs 1 through 61 above as if fully stated herein.

69. Upon information and belief, during and/or immediately after Burrows's and Onofry's employment at PEM, they solicited PEM's customers not to enter into or continue a business relationship and/or contract with PEM.

70. When Burrows and Onofry solicited PEM's customers and employees, they knew those customers and employees had existing or potential business relationships and/or contracts with PEM.

71. When Burrows and Onofry committed the above-described acts, they thereby caused injury to PEM and tortiously interfered with PEM's business relationships with those individuals and/or companies.

72. When Burrows and Onofry committed the above-described acts, they did so improperly, without privilege, purposefully, and with malice and intent to injure PEM.

73. On information and belief, Airco explicitly or implicitly took part in, encouraged, and/or benefited from Burrows's and Onofry's tortious interference with PEM's business relationships.

COUNT III

MISAPPROPRIATION OF TRADE SECRETS
(All Defendants)

74. PEM repeats and realleges paragraphs 1 through 61 above as if fully stated herein.

75. As a result of their employment and positions of trust within PEM, Burrows and Onofry were given access to PEM's valuable trade secrets, including, but not limited to, confidential customer lists, retail and cost price lists, project staffing information, profit margin analysis, financial compilations and projections, and sales and marketing programs, methods, and strategies. All of these materials are unique to PEM and not commonly known or available to the public.

76. PEM's trade secrets misappropriated by Burrows and Onofry derive independent economic value, actual or potential, from not being generally known to other persons who can obtain economic value from their disclosure or use. PEM takes steps that are reasonable under the circumstances to maintain the secrecy of its trade secret information.

77. Airco explicitly or implicitly took part in, encouraged, had knowledge of, and/or benefited from Burrows's and Onofry's misappropriation of PEM's trade secrets.

78. Burrow's and Onofry's misappropriation of PEM's trade secrets gives Defendants an unearned, unfair and unjust advantage in operating a competing business.

79. No Defendant had PEM's consent, express or implied, to appropriate or disclose PEM's trade secrets for their own use or benefit or for the use or benefit of any other entity.

80. The use or disclosure, or threatened use or disclosure, of PEM's trade secrets by Defendants entitles PEM to immediate injunctive relief and damages.

81. At all material times, Defendants have acted willfully, maliciously, and in bad faith.

82. The acts and threatened acts of misappropriation or misuse of PEM's trade secrets have caused and will continue to cause irreparable harm to PEM.

COUNT IV

BREACH OF EMPLOYEE DUTY OF LOYALTY

(Against Burrows and Onofry)

83. PEM repeats and realleges paragraphs 1 through 61 above as if fully stated herein.

84. When Burrows and Onofry were PEM employees, they each owed PEM a duty of loyalty, good faith, fidelity, and trust, which included, but was not limited to, a duty not to engage in disloyal acts in anticipation of future competition, such as misusing confidential information acquired during the course of their employment or soliciting customers and/or other employees prior to the end of his employment with PEM.

85. Defendant Burrows breached his duty of loyalty to PEM by, among other things:

A. Soliciting business from PEM's clients for his personal benefit and/or the benefit of Airco;

B. Wrongfully misappropriating confidential and/or trade secret information for his personal use and/or the use of Airco; and

C. Engaging in other acts and/or acquiring other interests adverse to PEM that was inconsistent with promoting the best interest of PEM at a time when Burrows was on PEM's payroll.

86. Defendant Onofry breached his duty of loyalty to PEM by, among other things, aiding, abetting, encouraging, and/or ratifying another employee (Leon Motts) in usurping a PEM business opportunity for the staffing of millwrights and by wrongfully misappropriating confidential and/or trade secret information for his personal use and/or the use of Airco.

87. As a direct and proximate result of Burrows' and Onofry's willful breach of their duty of loyalty, PEM has suffered and will continue to suffer damages in the form of wages and benefits paid to, but not earned by, Burrows and Onofry; lost business; lost revenue; lost goodwill; lost employees; lost customers; compensatory damages; and other further damages.

COUNT V

AIDING AND ABETTING BREACH OF THE DUTY OF LOYALTY

(Against Airco and Onofry)

88. PEM repeats and realleges paragraphs 1 through 61 above as if fully stated herein.

89. On information and belief, Airco and Onofry knowingly induced, participated in, and/or purposefully benefited from a breach of fiduciary duty of one or more PEM employees, including Burrows. These breaches include, but may not be limited to, wrongful solicitation of PEM's customers and/or employees and the wrongful appropriation of trade secret and/or other information valuable to PEM.

90. Airco and Onofry committed the above-acts despite being aware of Burrows's fiduciary duties to PEM.

91. PEM has been damaged by, and Airco and Onofry have sought to benefit from, the induced breaches of fiduciary duty.

COUNT VI

CONSPIRACY

(Against all Defendants)

92. PEM repeats and realleges paragraphs 1 through 61 above as if fully stated herein.

93. Defendants conspired to tortiously interfere with PEM's prospective business relations, to misappropriate PEM's trade secrets, and to utilize and obtain information through unauthorized access to protected computer systems.

94. Defendants were hired by Airco with the full knowledge of their possession of PEM's confidential and proprietary information. Defendants used and disclosed PEM's confidential and proprietary information for the benefit of Airco in the procurement of business from clients and vendors that Onofry and Burrows had learned about while employed by PEM.

95. Defendants' willful and malicious acts and conduct prevented or will prevent prospective contracts between PEM and its clients and vendors from occurring, proximately causing damage to PEM, including but not limited to a loss of revenue.

WHEREFORE, Plaintiff Power Equipment Maintenance, Inc. demands that the Court enter judgment:

A. For Plaintiff and against Defendants on each count of the foregoing Complaint;

B. For immediate and permanent injunctive relief prohibiting the disclosure or use of PEM's confidential information and/or trade secrets, the interference with PEM's customer relationships, and requiring the return of any and all PEM information in Defendants' possession, custody, or control;

C. For compensatory and punitive damages, plus interest, in an amount to be proved at trial;

D. For attorneys' fees and costs as allowed by statute and/or contract; and

E. For such other or further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

PEM hereby demands a trial by jury on all claims so triable.

Respectfully submitted this 8th day of March, 2013.

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